

REMARKS

Claims 15-16, 18-19, 21, 27, 29-30 and 32-36 are rejected, under 35 U.S.C. § 103, as being unpatentable over United States Patent No. 5,165,400 (Berke `400) in view of United States Patent No. 6,277,144 (Tomic-Edgar `144). The Applicant acknowledges and respectfully traverses the raised obviousness rejection in view of the above amendments and the following remarks.

Berke `400 and Tomic-Edgar `144 each disclose a hyperthermia article comprising a generally U-shaped hollow body having sets of air holes spaced about a portion of the surface of the article directed at the patient. The air holes allow air to pass through the otherwise impervious surface layer, thus causing "jetting" of the air which leads to uneven heating of a patient as well as other problems.

The problems, like "jetting" for example, that are associated with such air holes are prevented with the entirety of one of the layers of the blanket being porous in the claimed manner. Such porosity of the noted layer evenly warms the patient without forming relatively high velocity streams of air and the air is delivered at a relatively low velocity over the entire surface of the material. The porous layers, as currently claimed, are shown in the Figs. of the application as being uniformly porous.

Such terms as "relatively high velocity" and "relatively low velocity" would be quite clear to a skilled person from the reading of the specification and understanding that the purpose of the invention is to avoid uneven heating of a patient placed within the warming blanket.

Further, the Applicant asserts that even if the term "porous" on its own is considered to cover materials as taught by Berke `400 and Tomic-Edgar `144 (which the Applicant does not consider to be the case), a person of skill in the art, from reading of the specification, would clearly understand that the Applicant's use of the term "porous" clearly distinguishes from the

type of material which is impervious with hole punch in it and discussed in the background of the application.

Claims 22-26 and 37 are rejected, under 35 U.S.C. § 103, as being unpatentable over Berke `400 in view of Tomic-Edgar `144 and United States Patent No. 5,963,997 (Hagopian `997). The Applicant acknowledges and respectfully traverses the raised obviousness rejection in view of the above amendments and the following remarks.

The Applicant acknowledges that the additional reference of Hagopian `997 may arguably relate to the features indicated by the Examiner in the official action. Nevertheless, the Applicant respectfully submits that the combination of the base references of Berke `400 in view of Tomic-Edgar `144 with this additional art of still fails to in any way teach, suggest, disclose or remotely hint at the above distinguishing features of the presently claimed invention. As such, all of the raised rejections should be withdrawn at this time in view of the above amendments and remarks.

In response to the Examiners remarks regarding to U.S. Pat. No. 7,066,949, the Applicant notes that this patent is a Continuation of an application filed on November 13, 2003. The current application however has a priority date December 9, 2002, which predates the above date by about 11 months.

In order to emphasize the above noted distinctions between the presently claimed invention and the applied art, the independent claims 15, 22 and 27 of this application now recite the features of "the warmed air is delivered to the patient receiving space by diffusing *over the entire surface of the porous material* at a relatively *low velocity* so as to have the effect of evenly warming the patient without forming relatively *high velocity* streams of air". Independent claim 37 of this application now recites the features of "a first layer of the two layers of the blanket is formed of porous material *having a substantially uniform porosity such that a point of the first layer has substantially the same porosity as all other points over an*

entirety of the first layer so that the warmed air is delivered to the patient receiving space by diffusing *evenly over the entirety of the first layer* at a relatively *low velocity* so as to have an effect of evenly warming the patient without forming relatively *high velocity* streams of air". Such features are believed to clearly and patentably distinguish the presently claimed invention from all of the art of record, including the applied art.

If any further amendment to this application is believed necessary to advance prosecution and place this case in allowable form, the Examiner is courteously solicited to contact the undersigned representative of the Applicant to discuss the same.

In view of the above amendments and remarks, it is respectfully submitted that all of the raised rejection(s) should be withdrawn at this time. If the Examiner disagrees with the Applicant's view concerning the withdrawal of the outstanding rejections or applicability of the Berke '400, Tomic-Edgar '144 and Hagopian '997 references, the Applicant respectfully requests the Examiner to indicate the specific passage or passages, or the drawing or drawings, which contain the necessary teaching, suggestion and/or disclosure required by case law. As such teaching, suggestion and/or disclosure is not present in the applied references, the raised rejection should be withdrawn at this time. Alternatively, if the Examiner is relying on his/her expertise in this field, the Applicant respectfully requests the Examiner to enter an affidavit substantiating the Examiner's position so that suitable contradictory evidence can be entered in this case by the Applicant.

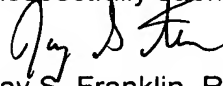
In view of the foregoing, it is respectfully submitted that the raised rejection(s) should be withdrawn and this application is now placed in a condition for allowance. Action to that end, in the form of an early Notice of Allowance, is courteously solicited by the Applicant at this time.

The Applicant respectfully requests that any outstanding objection(s) or requirement(s), as to the form of this application, be held in abeyance until allowable subject matter is indicated for this case.

10/538,303

In the event that there are any fee deficiencies or additional fees are payable, please charge the same or credit any overpayment to our Deposit Account (Account No. 04-0213).

Respectfully submitted,



Jay S. Franklin, Reg. No. 54,105

Customer No. 020210

Davis & Bujold, P.L.L.C.

112 Pleasant Street

Concord, NH 03301-2931

Telephone 603-226-7490

Facsimile 603-226-7499

E-mail: patent@davisandbujold.com